

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 25993 of 2015 (Y)

PETITIONER :

**NITHIN DEV V.R.,
S/O. VIJAYAKUMAR T., AGED 19,
RESIDING AT MASS RESIDENCE,
NEAR PONMADAM JUME MASJID,
PONMADAM, MALAPPURAM – 676 106.**

**BY ADVS.SRI.K.C.ELDHO
SRI.JIJO THOMAS
SRI.MALLEENATHAN M.
SRI.ANEESH JAMES
SRI.ANIL R.NATH**

RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT
DEPARTMENT OF SCHEDULED CASTE/SCHEDULED TRIBE
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM – 695 001**
- 2. THE SCRUTINY COMMITTEE FOR VERIFICATION OF COMMUNITY
CERTIFICATES
SC/ST DEVELOPMENT DEPARTMENT,
GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM – 695 001
REPRESENTED BY ITS CHAIRMAN**
- 3. THE VIGILANCE CELL
DIRECTORATE OF KIRTADS
KOZHIKODE – 17**
- 4. THE COMMISSIONER FOR ENTRANCE EXAMINATIONS
5TH FLOOR, HOUSING BOARD BUILDINGS
SANTHI NAGAR, THIRUVANANTHAPURAM – 695 001.**

BY SPL. GOVT. PLEADER (SC/ST) SMT. LALY VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1 - A TRUE COPY OF THE CASTE CERTIFICATE ISSUED BY THE
TAHASILDAR, TIRUR TALUK.
- EXHIBIT P2 - A TRUE COPY OF THE REPORT SUBMITTED BY THE VILLAGE
OFFICER, ANAVOOR DATED 25.01.2014.
- EXHIBIT P3- A TRUE COPY OF THE CERTIFICATE ISSUED BY THE KERALA
AYYANAVAR SERVICE SOCIETY DATED 03.06.2014.
- EXHIBIT P4- A TRUE COPY OF THE REPORT DATED 05.05.2014 OF THE 3RD
RESPONDENT.
- EXHIBIT P5- A TRUE COPY OF THE APPEAL PREFERRED BY THE
PETITIONER'S FATHER.
- EXHIBIT P6- A TRUE COPY OF THE JUDGMENT DATED 09.04.2015 IN
W.P.(C) NO. 11871 OF 2015 OF THIS HON'BLE COURT.
- EXHIBIT P7 - A TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER FOR ADMISSION TO PROFESSIONAL DEGREE
COURSES, 2015.
- EXHIBIT P8- A TRUE COPY OF THE CANDIDATES DATA SHEET IN RESPECT
OF THE PETITIONER ISSUED BY THE OFFICE OF THE 4TH
RESPONDENT.
- EXHIBIT P9 - A TRUE COPY OF THE COLLEGE WISE LAST RANK DETAILS
AFTER THE MEDICAL ALLOTMENT ON 27.07.2015 PUBLISHED
BY THE 4TH RESPONDENT.
- EXHIBIT P10 - A TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER TO THE 2ND RESPONDENT.
- EXHIBIT P11 - A TRUE COPY OF THE ORDER DATED 22.08.2015 OF THE 1ST
RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.25993 of 2015

Dated this the 3rd day of August, 2015

J U D G M E N T

The petitioner in this writ petition is a candidate, who has applied for MBBS course. The petitioner claims reservation being the member of the Scheduled Caste.

2. The petitioner is admittedly an offspring of an inter caste marriage couple. His father belongs to the Hindu Ayyanavar community, which is included in the list of Scheduled Caste and his mother belonged to Hindu Naidu community, which belongs to Other Backward Caste.

3. The Tahsildar issued a community certificate showing that the petitioner belongs to Ayyanavar community. The question regarding the caste status of an offspring of an inter cast marriage is governed by GO (MS) 109/SCSTDD 20.11.2008, it prescribes the manner of enquiry as follows:

- i) Each case shall be examined individually in the light of the existing facts and circumstances,

- ii) They have suffered disabilities-socially-economically and educationally,
- iii) The society has accepted the claimant to their original fold as one among them and is living in the same social tenet.

4. When the petitioner applied for admissions to professional courses, that was referred to KIRTADS for Anthropological report. Ext.P4 is the report. By Ext.P4 report, Vigilance Officer, KIRTADS reported that totality of the situation reveals that the petitioner does not fulfill the criteria of the Government Order referred as above for considering him as a member of the Scheduled Caste.

5. The petitioner filed a revision before the Government. Ext.P11 is the order of the Government. The Government also affirmed the decision of the KIRTADS and rejected the revision.

6. The petitioner impugns Exts.P4 and P11 in this writ petition. The scope of judicial review is limited to examine the decision making process of the Government in

deciding the caste status of the petitioner.

7. The petitioner's father is a native of Neyyattinkara and his mother is the native of Thirunelveli in Tamilnadu. To examine the acceptance of the community of the father, necessarily the question has to be examined is, where the petitioner has been brought up and in the manner in which he has been brought up. No where it is seen from in the impugned order that the authority has find petitioner ever lived along with his mother or her family in Thirunelveli or any other place.

8. On the other hand, all the materials placed before the Court and before the authorities would indicate that the petitioner was living along with his father. The Government order clearly indicates that each case has to be examined individually based on the existing facts. Therefore, the scope of such enquiry is limited as to whether the petitioner suffer the same disability or social infirmity, of the community to which his father belongs. When facts otherwise disclose that petitioner was brought

up with his father necessarily, presumption goes with that the petitioner living in the community in which his father belongs. In such circumstances, it is for the State to show otherwise the petitioner was not living with his father but living with his mother who belongs to other community.

9. A child cannot live in an isolation. He lives in a family and the family lives in a society which governed by social norms and practices of the communities of the family which compose the society. In Ext.P3 certificate issued by the Kerala Ayyanavar Service Society also affirms the above fact. This Court need not disbelieve the above certificate considering the fact that the petitioner was living along with his father. Ext.P2 certificate would also show that petitioner was living withing jurisdiction of the Village Officer in Malappuram. Those circumstances clearly indicates that the petitioner was living along with his father that would suffice to hold that the petitioner is following the community of the father.

10. This court in **Lavya A. Vs. Director of Medical**

Education, Thiruvananthapuram [2014 i KHC 290]

discussed the principles which relating to the caste status of an offspring of the intercaste marriage.

“The principles that emerge from the foregoing discussion are the following:

- i) In the case of an offspring of an inter-caste marriage there is a strong presumption that the offspring takes the caste of the father, but, however, all the same a rebuttable presumption
- ii) Act 11/1996 casts the burden of proof on the claimant and it is for the claimant to establish his/her claim of being included as a member of the Scheduled Caste/Scheduled Tribe.
- iii) This burden cast on the claimant has to be harmonized with the presumption, stated above, which has been judicially recognized by binding decisions of the Hon’ble Supreme Court. Hence, if the father belongs to a forward community and the claim is based on the mother’s caste status, then the claimant has to establish that the claimant was brought up by the mother, within the fold of the Scheduled Caste/Scheduled tribe to which the mother belongs and prove that the claimant suffered the deprivation,s indignities, humiliaties and handicaps like any other member of the mother’s community. If the claimant relies on the caste of his father to substantiate his

claim of belonging to a Scheduled Caste/Scheduled tribe, then on establishing the cast of his father, the claimant discharges the burden cast on him and the presumption takes effect. This presumption, however, is rebuttable by the State or in the present case by the Expert Agency constituted under Art. 11/1996

- iv) The Cast Certificate issued by the Competent Authority is not conclusive as per the provisions of Act 11/1996 and is subject to verification by the Screening Committee and the Scrutiny Committee.
- v) The report of the Expert agency is conclusive proof, for or against the Scheduled caste or Scheduled Tribe claim, unless the same is found contrary by the Scrutiny committee.
- vi) Though not conclusive when the competent Authority under the Act has issued a Community Certificate after due process, then to unsettle the claim there should be sufficient cogent material evidence to disprove the claim."

11. The learned Special Government Pleader submits that they have already filed an appeal before the Division Bench of this Court and the same is pending.

12. The principle discussed in the above judgment

also refers to the presumption to be followed in the case of offspring of an intercaste marriage. The overall facts emerged in this case clearly indicates that petitioner was living with his father and he never brought up with any other milieu or circumstances of that of his mother. In that view of the matter, impugned orders are liable to be set aside. Accordingly, the writ petition is allowed. The petitioner shall be considered for any of the remaining seats for the Scheduled cast quota based on his rank. It is made clear that the allotment already made shall not be affected for considering the petitioner.

The writ petition is disposed of as above.

Sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

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